

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

- - - - - x
:
UNITED STATES OF AMERICA, :
:
v. : Criminal No. 17-2534-TJS
:
LEE ELBAZ, :
:
Defendant. :
:
- - - - - x September 20, 2017
Greenbelt, Maryland

DETENTION HEARING

BEFORE: THE HONORABLE TIMOTHY J. SULLIVAN, Magistrate Judge

APPEARANCES:

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KEYNOTE: "----" indicates inaudible in the transcript.
 "*" indicates word is phonetically spelled.

1 P R O C E E D I N G S

2 (Whereupon, at 9:06 a.m., the proceeding began.)

3 THE CLERK: The Honorable Timothy J. Sullivan
4 presiding.

5 THE COURT: Good morning, everybody. Have a seat.
6 Government, call the case, please.

7 MR. KHARDORI: United States of America versus Lee
8 Elbaz. Criminal Case No. TJS-17-2534.

9 THE COURT: Thank you. And you are --

10 MR. KHARDORI: Ankush Khardori on behalf of the
11 Government, along with Nick Mitchell.

12 THE COURT: All right, thank you.

13 MR. MITCHELL: Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. LOPEZ: Good morning, Your Honor. Jonathan
16 Lopez from Orrick Herrington on behalf of my client, Lee
17 Elbaz, who is present.

18 THE COURT: Mr. Lopez, have you entered your
19 appearance with the Court electronically?

20 MR. LOPEZ: Your Honor, I have not. I have an
21 appearance form.

22 THE COURT: Okay, you have a hard copy?

23 MR. LOPEZ: I do have a hard copy, I just don't
24 remember my bar number.

25 THE COURT: All right. Well, why don't you pass

lcj

4

1 your hard copy up to the courtroom deputy. We will make sure
2 that it gets docketed.

3 MR. LOPEZ: May I approach, Your Honor?

4 THE COURT: Sure, absolutely.

5 (Pause)

6 THE COURT: Ma'am, you are Lee Elbaz?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Please stand and pull that microphone in
9 front of you. And please raise your right hand.

10 (Whereupon, the Defendant was sworn.)

11 THE COURT: You may put your hand down? Ma'am, what
12 is your full name?

13 THE DEFENDANT: Lee Elbaz.

14 THE COURT: And how old are you?

15 THE DEFENDANT: 36 and a week.

16 THE COURT: 30 --

17 THE DEFENDANT: 36 and a week.

18 THE COURT: 36. So you are 35 now.

19 THE DEFENDANT: No.

20 MR. LOPEZ: Her birthday was a week ago. She is 36
21 and a 1 week.

22 THE COURT: Okay, 36 and a week. Okay, so you are
23 36. How far did you go in school?

24 THE DEFENDANT: I start my academic degree and
25 unfortunately I don't have the money to finish it. So I miss

1 three courses.

2 THE COURT: Okay. Do you read, write and understand
3 English?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is English your native language?

6 THE DEFENDANT: No, sir.

7 THE COURT: Here and in the Eastern District of New
8 York yesterday, did you have any trouble understanding the
9 court proceedings in English?

10 THE DEFENDANT: No, I have somebody who was from the
11 courts to explain to me. But I understand 99.9 of the things.

12 THE COURT: And that is my question. Do you need a
13 Hebrew interpreter here today to help you understand what is
14 going on?

15 THE DEFENDANT: No, sir. No, sir.

16 THE COURT: No? All right. Are you a United States
17 citizen?

18 THE DEFENDANT: No, sir.

19 THE COURT: What is your country of origin?

20 THE DEFENDANT: Israel.

21 THE COURT: Because of your nationality, the
22 Government -- as a non-U.S. citizen who has been arrested or
23 detained, you may request that the Government notify your
24 country's consulate officers here in the United States of your
25 situation. You may also communicate with your consulate

1 officer. A consulate officer may be able to help you obtain
2 legal representation and may contact your family and visit you
3 in detention, among other things.

4 If you want the Government to notify your consulate
5 officers of Israel, you can request this notification now or
6 any time in the future. Do you want the Government to notify
7 your consulate officer at this time or do you defer?

8 THE DEFENDANT: Defer.

9 THE COURT: Ma'am, are you under the influence of
10 any drugs, alcohol or medication that would in any way
11 interfere with your ability to understand these proceedings?

12 THE DEFENDANT: Can you repeat, please?

13 THE COURT: Are you under the influence of any
14 drugs, alcohol or medication that would in any way interfere
15 with your ability to understand these proceedings?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you under the active care of a
18 medical doctor or mental health professional for any reason?

19 THE DEFENDANT: No, sir.

20 THE COURT: Okay. Have you received a copy of the
21 criminal complaint that has been filed and the affidavit in
22 support of the criminal complaint that has been filed?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. You can have a seat.

25 THE DEFENDANT: Thank you, sir.

1 THE COURT: Ma'am, my name is Tim Sullivan. I am
2 one of the Magistrate Judges here. You are now in the United
3 States District Court for the District of Maryland. This is
4 the jurisdiction that the criminal charge against you has been
5 filed. A lot of what we are doing today you went through
6 yesterday at your initial appearance on your Rule 5 out in the
7 Eastern District of New York but we are going to repeat that
8 today.

9 The purpose of this proceeding is to advise you of
10 the nature of the charges against you, to talk to you about
11 important constitutional rights that you have, and to talk
12 about your release status; that is, whether you stay in the
13 custody of the United States marshal, pending the completion
14 of this case, or whether you can be returned to the community
15 under conditions and/or a combination of conditions of
16 release.

17 Ma'am, in the criminal complaint, as you know, you
18 are charged with wire fraud in violation of Title 18 of the
19 United States Code, Section 1343, as well as conspiracy to
20 commit wire fraud in violation of Title 18 of the United
21 States Code, Section 1349. And Government, the maximum
22 possible penalty?

23 MR. KHARDORI: 20 years and a \$250,000 fine.

24 THE COURT: Per count.

25 MR. KHARDORI: That is correct.

1 THE COURT: And \$100 special assessment and the
2 possibility of forfeiture.

3 MR. KHARDORI: Yes, Your Honor.

4 THE COURT: Ma'am, do you understand generally the
5 nature of these two charges as well as the maximum possible
6 penalties, knowing that there is no parole in the federal
7 system?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You can have a seat. You don't have to
10 stand up anymore. Thank you.

11 Ma'am, you have important constitutional rights as a
12 criminal defendant. The first is your 5th Amendment right to
13 remain silent. Nobody can force, make or coerce you to say
14 anything. Anything you say may be used against you. Do you
15 understand your 5th Amendment right to remain silent?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Ma'am, you also have the very important
18 6th Amendment right to be represented by an attorney at every
19 stage of these proceedings. You have counsel here today.
20 They are your retained counsel, your counsel of choice.

21 I am advising you that if at any point you find
22 yourself without an attorney, you can ask the Court to
23 consider the appointment of counsel for you if you financially
24 qualify. Do you understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Government, on release?

2 MR. KHARDORI: Your Honor, the Government is seeking
3 detention. We are prepared to argue.

4 THE COURT: Okay. What are your reasons for
5 detention? I mean, I don't need to hear the whole
6 presentation now but danger, flight --

7 MR. KHARDORI: Flight. Flight is the principle
8 issue here. The Defendant obviously is an Israeli citizen.
9 She has very, very limited contacts with the US.

10 THE COURT: Counsel, any preliminary comments on
11 anything? Are you ready to go forward with the detention
12 hearing or do you want to set it in at a later date?

13 MR. LOPEZ: No, I would like to move forward today,
14 Your Honor. And if I may be heard, this is a perfect time if
15 you would like to hear my thoughts.

16 THE COURT: Let me, let me -- I don't need to, not
17 right this second. Look, I have read the Eastern District of
18 New York pretrial services report, and quite frankly, I want
19 another one done by our pretrial services officers.

20 I want it to supplement it. There are too many
21 holes and gaps. I mean, I give her credit for being here
22 today but I have a lot of issues with the report and I am not
23 satisfied with her report as it was done in the Eastern
24 District, and I am going to continue this for a little bit
25 this morning to allow your client, if you choose.

1 If you choose that she doesn't want to be
2 interviewed, that is fine too but I want a supplemental report
3 prepared by our pretrial services office to bolster and give
4 me some more information about this -- about your client.

5 So that is what we are going to do and then we will
6 move forward with a hearing later on today, all right,
7 whenever pretrial is ready.

8 Ma'am, I am going to continue this. I don't know
9 enough about you except to know that you are not a United
10 States citizen and, from what I see, you know two people in
11 the United States of America. One in San Francisco and one in
12 New York.

13 So I think the Government is totally right to
14 consider you to be a flight risk. My question in my mind is
15 whether I detain you right not to be interviewed or whether I
16 trust you enough to stay in this building with your attorney
17 and to be interviewed by pretrial services and then come back
18 when we have a hearing.

19 Let me ask -- Ms. McCabe, how long will it take you
20 to do a supplemental report, do you think, given the schedule
21 today?

22 MS. McCABE: Your Honor, I believe from start to
23 finish, with the verifications, about approximately an hour.

24 THE COURT: Okay, that sounds fine. I am going to
25 let you -- I am not going to you detain you or anything right

1 now but here is what I am ordering.

2 You are to leave this courtroom and go directly with
3 the pretrial services officers and your counsel to their
4 office downstairs. You can talk to your lawyer in private
5 about whether or not you want to provide any information or
6 not. You are not required to.

7 If you choose not to, you don't have to have to do
8 that, and I will just rely on what you told the pretrial
9 services office in the Eastern District of New York.

10 We will regroup at -- let's just say 10:30 a.m. We
11 will reschedule this for 10:30 a.m. and we will have a
12 detention hearing at 10:30 a.m.

13 Ma'am, I don't know what the Magistrate Judge told
14 you in New York but let me tell you that all federal courts
15 throughout the country -- Eastern District of New York,
16 District of Maryland -- we all have to file the Bail Reform
17 Act.

18 Under the Bail Reform Act, a Magistrate Judge such
19 as myself has to look at two things: Are you a danger to the
20 community and in my view, counsel, I don't know if you have
21 ever appeared in front of me before, economic danger to the
22 community is a real big deal to me.

23 So, you know, that is a factor. And the other
24 factor is risk of flight, whether or not there is a serious
25 risk that you will not appear as required, or whether you will

1 disappear.

2 For example, try to get back to Israel, for example,
3 or to some other country -- Czech Republic or wherever else
4 you have traveled to.

5 And then I have to listen to the parties' arguments
6 and use the factors in the Bail Reform Act to make a
7 determination as to whether detention is appropriate. That
8 is, you will stay in custody of the United States marshal.

9 Or whether or not conditions and/or a combination of
10 release conditions are appropriate that would allow you to
11 remain in the community pending the resolution of the case.

12 We are going to have that hearing at 10:30 a.m., but
13 as I said, I think that I would like a more complete picture
14 than what I have about you, and that is why I am going to ask
15 pretrial to do a supplement to the report, and we will get
16 together at 10:30 a.m., and we will figure this all out.

17 But make no mistake, I am instructing you and
18 ordering you not to leave this building. You are not to leave
19 this building, and I have said this a million times to people,
20 and they leave the building. Do not leave the building for
21 any reason. Do not leave the building. And we will see you
22 back at 10:30 a.m. All right, anything else?

23 MR. KHARDORI: Your Honor, the parties have
24 conferred and respectfully request that an arraignment be held
25 at 10:30 a.m. as well.

1 THE COURT: Sure, that is fine, too. If that is
2 amenable to everybody, we can do that as well. All right,
3 thank you. See you at 10:30 a.m.

4 THE CLERK: All rise. The Honorable Court stands in
5 recess.

6 (Whereupon, 9:12 a.m., the case was set aside and at
7 11:17 a.m. the case was recalled.)

8 THE CLERK: The Honorable Timothy J. Sullivan
9 presiding.

10 THE COURT: Good morning. Government, call the
11 case. Have a seat, please.

12 MR. KHARDORI: United States of America versus Lee
13 Elbaz, Criminal Case No. TJS-17-2534. Ankush Khardori on
14 behalf of the Government along with Nick Mitchell.

15 THE COURT: All right. Mr. Lopez, good morning.

16 MR. LOPEZ: Good morning.

17 THE COURT: All right, so just as a preliminary
18 matter, before we left, everybody said they wanted to have an
19 arraignment, but then when I went back, it dawned on me that I
20 don't have any information that there is an indictment.

21 So I have a criminal complaint. So I am not sure
22 exactly -- I am unaware, in my 30 years, I am unaware of any
23 arraignment that goes with a criminal complaint so unless the
24 Government has got an indictment that hasn't been presented to
25 the Court yet, or they plan on getting it today at some point,

1 I don't think we can move forward with the arraignment.

2 The only thing we can do is set in a preliminary
3 hearing date depending on what happens.

4 MR. KHARDORI: Your Honor is absolutely correct.
5 Thank you, Your Honor.

6 THE COURT: So I have asked pretrial in our district
7 to do a supplemental report, and they are here in the
8 courtroom as well. And both parties had an opportunity to
9 review the pretrial services report.

10 And other than the conclusion and recommendation,
11 are there any material objections or corrections that either
12 side wishes to make to the supplemental pretrial services
13 report? Government?

14 MR. KHARDORI: The Government has reviewed it. We
15 have no objections or corrections.

16 THE COURT: Mr. Lopez?

17 MR. LOPEZ: Yes, Your Honor. I was talking with
18 Mr. -- I was trying to reach him after we walked out. One
19 part that we didn't quite cover were her ties within the US.

20 She has an aunt, which we know about. She has the
21 friend, --- , which we know about, but there was another
22 friend that she is very close with, that she gave to the
23 arresting officer his name and number she was supposed to
24 spend with him that night. That is one piece of information
25 that wasn't available.

1 A very, very close friend of hers for over 10 years
2 who is also willing to post bond, a significant amount of
3 bond.

4 He is married, he is a green card holder. If this
5 is not the perfect time for this, that is fine. He lives in
6 New York.

7 THE COURT: So basically you are telling me that
8 there are other people who can be included in the report who
9 could either provide financial assistance or a place for her
10 to stay or whatever, and you are going to raise that in your
11 argument but it is not in the report.

12 MR. LOPEZ: It is slightly more than that in that it
13 is not just people willing to put money up. She has more ties
14 to the United States.

15 THE COURT: You are saying they need to be put in
16 this report?

17 MR. LOPEZ: Well --

18 THE COURT: I will put them in. Who are they?

19 MR. LOPEZ: Sure. The one is in New York. Amnon,
20 A-m-n-o-n, T-u-a-f.

21 THE COURT: T-u-a-s?

22 MR. LOPEZ: F as in Frank.

23 THE COURT: Okay.

24 MR. LOPEZ: A close friend of hers since 2008. She
25 was going to be staying with him the first night here.

1 THE COURT: Okay.

2 MR. LOPEZ: How much more information would you like
3 on him for the purposes of --

4 THE COURT: That is all I need right now. Who else?

5 MR. LOPEZ: And then the second one was Meital,
6 M-e-i-t-a-l.

7 THE COURT: I am sorry. M --

8 MR. LOPEZ: M, e as in echo, i, t as in Tom, a, l as
9 in Lima. Levari. L-e, v as in victor, a-r-i.

10 THE COURT: Okay, and who is this person?

11 MR. LOPEZ: Also a very close friend who also lives
12 in New York.

13 THE COURT: Okay, so we will make sure that they get
14 included in the report. So other than that, both parties have
15 reviewed the pretrial services report. Let's talk, before we
16 begin --

17 MR. LOPEZ: Your Honor, sorry. Apologies. One more
18 objection -- a couple more objections. Forgive me, Your
19 Honor, if you think this is more appropriate at a different
20 time. I would just like to add color to the discrepant
21 financial information comment.

22 Apparently there is a discrepancy between what she
23 said her assets were and what her aunt, who lives here,
24 believes them to be in Israel. That is the discrepancy. It
25 is not her own discrepancy.

1 THE COURT: All right, that -- go ahead. That
2 doesn't move the needle in any direction. What is your next?

3 MR. LOPEZ: The next one is with respect to the
4 active ICE detainer, I would object to that.

5 THE COURT: I was just getting ready to talk about
6 that so go ahead. So you object to that.

7 MR. LOPEZ: Yes, I object to that. It is an
8 unsigned detainer. It is an unsigned form that has never been
9 served on her. Six days ago, unsigned, not acted upon. And
10 one second. I actually have an immigration attorney here to
11 speak to that if it were to become an issue as to what the
12 operation might be.

13 But my understanding is that the proceedings as a
14 whole will continue, not just today but the prosecution,
15 without ICE interfering until this matter is resolved. That
16 ICE detainer, as I said, I would take objection to the fact
17 that is being active.

18 THE COURT: As being what?

19 MR. LOPEZ: An active ICE detainer. It is described
20 as an active ICE detainer. I would say it is a form that is
21 unsigned.

22 THE COURT: All right, so let me ask the Government
23 about that. Before I do that, any other issues with the
24 report?

25 MR. LOPEZ: I raised this with pretrial but they

1 said it was the same difference but possession of a valid
2 foreign passport, CBP has her passport. She doesn't --

3 THE COURT: Okay, I understand. Okay. Anything
4 else?

5 MR. LOPEZ: No, that is all I have.

6 THE COURT: Okay. So Government, help me understand
7 what the significance of anything is to this unsigned ICE
8 detainer and Mr. Mitchell, I hope he gave you a heads up.

9 I think these ICE detainers are like nonsense, and I
10 think they are prophylactic, and, you know, I have warned
11 other assistant US attorneys that there is a case from the
12 District of North Dakota where a Magistrate Judge does an
13 exhaustive review of ICE detainers and how ICE detainers
14 interplay with the Bail Reform Act.

15 And whether or not it is appropriate to just
16 automatically say ICE detainer, and then, oh, everything has
17 got to stop, and we don't make further inquiries as to whether
18 a Defendant, subject to release conditions or a combination to
19 release conditions because, oh, ICE detainer.

20 And I am trying to figure out -- again, I am not an
21 immigration Judge. I don't know anything about immigration
22 but my understanding is that this Defendant came into the
23 United States lawfully. Name on a manifest, flew from Israel
24 to New York City, comes into the country lawfully, has a
25 passport, gets arrested on my arrest warrant, and suddenly

1 this person who comes into the United States lawfully should
2 be detained because there is an ICE detainer.

3 So why are you presenting or what is the argument
4 that you are presenting to the Court, this unsigned ICE
5 detainer that -- and what is the relevance to anything that
6 you are going to argue today, if anything?

7 MR. KHARDORI: It is not relevant, Your Honor. We
8 fully agree -- Mr. Mitchell also did give me a heads-up but I
9 think you are right on all scores.

10 THE COURT: Okay. So there you go, you won your ICE
11 detainer issue. So let's talk about risk of flight.
12 Government?

13 MR. KHARDORI: Your Honor, I recognize I was in
14 front of you a couple hours ago and I was remiss, and I
15 apologize, that I referred to the flight risk, and that is a
16 serious issue here but I think you flagged a more, perhaps the
17 more pertinent one, which is the danger to the community, the
18 economic danger.

19 This is a serious economic crime involving a lot of
20 victims. To date 33 complainants to the FBI alleging losses
21 of a million dollars. And there is a serious risk that, that
22 kind of harm could be ongoing.

23 Now I recognize that it is the defense's position
24 that the Defendant disassociated with the company a couple of
25 months ago. The information that pretrial received was a

1 little difficult for me to decipher because it says at one
2 point she was on medical leave, at one point she is unemployed
3 as of now, but also that she received a paycheck as recently
4 as apparently last week.

5 So we have serious concerns given the conduct that
6 is at issue here that there could be further losses to the
7 community, not just Americans. This has been a worldwide
8 problem. So that is the economic --

9 THE COURT: As we stand here today, what is
10 the -- and again nothing is in concrete but the estimated
11 fraud loss that the government could prove at this juncture
12 based on this criminal complaint? Do you have an estimate as
13 to what the Government would argue to a District Court Judge
14 as to what the fraud losses --

15 MR. KHARDORI: At this time, about \$1.1 to \$1.2
16 million.

17 THE COURT: All right, go ahead.

18 MR. KHARDORI: We expect that number to go up as
19 additional victims are identified. The second issue we have
20 is the quite serious risk of flight. Now I understand the
21 Defendant has some friends here and an aunt here but she is an
22 Israeli citizen, she has the preponderance of her ties,
23 familial and otherwise personal, appear to be in Israel.

24 Her ties to Israel themselves seem a little, not
25 entirely firm and permanent, meaning that we can't even be

1 assured that if she were to go back to Israel that we would be
2 able to find her because she may end up somewhere else
3 entirely after that.

4 So we have a very serious concern about the risk of
5 flight, and we don't think that concern is sufficiently
6 ameliorated by the proposed bond package, which itself is
7 apparently a moving target and without any real documentation
8 or evidence to support it. So those are our two principle
9 concerns.

10 THE COURT: So why can't -- to alleviate the flight
11 risk, why can't lots of financial charity be posted and have
12 her living at a certain address, perhaps under electronic
13 monitoring. Why isn't that appropriate to address the
14 Government's concerns about both economic danger to the
15 community and risk of flight?

16 Why are we jumping right to detention at the first
17 resort here?

18 MR. KHARDORI: Well, as you know, our burden on the
19 flight risk is preponderance standard, and what we know now,
20 right, is a proffer I suppose, of about a half million dollars
21 in equity in a home that the Defendant's aunt has in
22 California.

23 We don't know anything about whether there are any
24 other encumbrances on that property, liens, mortgages. That
25 is not enough assurance, in the Government's view, to compel

1 her.

2 The other issue with respect to -- to compel her to
3 be appearing here, and --

4 THE COURT: Yes, by the way, what do you think about
5 that, that this Magistrate Judge in the Eastern District of
6 New York, what weight should I give that?

7 He or she told this Defendant to be down here at
8 9:00 a.m. this morning, and shock of all shocks, she was here
9 at 9:00 p.m. this morning.

10 So you would think that if she wanted to -- she saw
11 the handwriting on the wall and she had a copy of these
12 charging documents, she would not have shown up in Court
13 voluntarily this morning for these proceedings so doesn't that
14 at least have some consideration that by her actions, she has
15 proven that she will come to Court as directed because she got
16 some mysterious -- I can't even read it, by the way.

17 It is like -- the copy I have is not really good.
18 You have got to turn it sideways and hold it up against a
19 solar eclipse or something to try to figure out what exactly
20 it is but the Judge up there put a \$1.2 million bond in
21 effect, so has that been perfected? Do you know?

22 MR. KHARDORI: No, we have no knowledge about
23 whether that has been perfected. And with respect to that
24 Judge having made a determination, it is my understanding
25 effectively that he was -- at least the Government advocated

1 that it be put on here so that you could make that
2 determination. This is the District Court where she is being
3 charged now.

4 With respect to her showing up this morning, now the
5 hearing in New York ended I think at about 4:00 p.m. yesterday
6 afternoon, so we are talking about 18 hours in between. That
7 is not a lot of time to get another passport and get out of
8 the country.

9 So I think it tells us a little bit but not much at
10 all really about whether the Defendant would appear for all
11 further proceedings. It only takes one time to not show up to
12 derail these proceedings. And, you know, being here for this
13 appearance is not nearly dispositive an argument and doesn't
14 tell us much.

15 With respect to the GPS monitoring, now the GPS
16 monitoring is not monitoring in real time. So it is useful.
17 If someone is in the US and you think they are going to be in
18 the US and they don't show up, the Government can go out and
19 find them, right?

20 There are plenty of cases where people have cut
21 those bracelets off and the Government loses them. And it is
22 extremely -- virtually useless when you are talking about
23 someone who, where the risk of flight is abroad because you
24 are not going to find out that they are gone until someone
25 checks, and lo and behold they are gone. You can't just go

1 and round them up.

2 So I don't think the GPS monitoring, under the facts
3 of this case, really help us out much at all.

4 THE COURT: All right, thank you. So counsel, so I
5 can be an equal opportunity annoyance to both of you, why in
6 the world am I going to give conditions of release to this
7 Israeli citizen who may have a couple good friends and an
8 aunt, on her best day.

9 Who has absolutely not only, you know, micro ties to
10 the community here in the District of Maryland, which are
11 none, but her ties to the United States, writ large, are
12 tenuous at best and given what you have read now in the
13 affidavit, which I am the one who issued the arrest warrant so
14 you know, I feel fully up to date on what the allegations are
15 in this case.

16 What is your argument to me that, one, your client
17 is not an economic danger to the community based on the fraud
18 loss and the scheme that has been alleged by the Government.
19 And of course a Grand Jury hasn't found probable cause yet but
20 as we all know, it is not, despite what the forefathers
21 anticipated, not very hard for the Government to get
22 indictments in any federal district.

23 But tell me what your plan is for risk of flight
24 because this is one of these weird cases where she thought she
25 was coming in to go to some birthday gathering and she got

1 arrested, so she wasn't anticipating this. Probably wouldn't
2 have come here if she knew she was under investigation.

3 And what conditions or combination of conditions of
4 release are you going to suggest that would reasonably assure
5 that she doesn't flee, she doesn't try to get out of the
6 United States, and go back to Israel or wherever.

7 I think risk of flight is a real, real concern here
8 and I would be interested to hear what your position is on
9 conditions and/or combination of release conditions.

10 MR. LOPEZ: Yes, Your Honor. The prosecutor made a
11 statement about what we know. Let me tell you what we know
12 and why risk of flight is going to be mitigated and why there
13 are reasonable conditions to assure, a combination of
14 conditions, to assure her appearance as required.

15 What we know is that this is a nonpresumption case.
16 We know that it followed a process in EDNY. It first went to
17 pretrial services there, and I understand it went here as
18 well, who exercised the professional and reasoned judgment.
19 They have experience in these things. They have looked at
20 this case.

21 And they have recommended pretrial release with
22 conditions. They thought the conditions could make sense to
23 assure her appearance.

24 THE COURT: Okay, but let me ask you this. Again,
25 you seem to be very competent but you know and I know that

1 Rule 5s out don't often get the attention that they are
2 supposed to get because all we are doing is -- we are just a
3 pass-through for the jurisdiction that has the case.

4 So when a Rule 5 comes to me, you know, my job is to
5 make sure it is the right person, give them their initial
6 appearance and then push them down the road and let some other
7 district, Magistrate Judge, worry about the merits of it.

8 So I am more concerned. My pretrial services office
9 says detention.

10 MR. LOPEZ: I am aware of that but let me just take
11 a step back. And I appreciate everything Your Honor just
12 said, and I am not going to try to say they did it so you
13 should. That is not my argument at all.

14 My argument is, they did it. Just the fact that
15 they did it, not just pretrial services, the Mag Court spent a
16 number -- close to two hours with us hearing all kinds of
17 arguments.

18 THE COURT: Were you up there?

19 MR. LOPEZ: I was there, yes. I was the lawyer.

20 THE COURT: Okay.

21 MR. LOPEZ: Neither of these two were.

22 THE COURT: I know.

23 MR. LOPEZ: And again I am not saying she did it so
24 you should. What I am saying is, she did it. And the reason
25 why that is important is that, as the Bail Reform Act, as this

1 Court knows, she should, she walks in here today with the
2 presumption, her presumption, that she walks out of here with
3 not a bond, not a signatory of anything.

4 Then she comes back. When it is determined that she
5 is a risk of flight, then the next step is what are the least
6 restrictive conditions possible? Not one more condition than
7 what is the least restrictive to reasonably assure her
8 appearance at trial.

9 Those conditions were set. They made sense
10 yesterday --

11 THE COURT: So where is the \$1.2 million? Where is
12 that? Has that been posted somewhere?

13 MR. LOPEZ: Yes, so she -- they --

14 THE COURT: Yes or no.

15 MR. LOPEZ: Yes but not secured.

16 THE COURT: So what does that mean? An unsecured --
17 oh, I promise to pay \$1.2 million but in order to do that I am
18 not posting any property. I got no skin in the game and if I
19 win the Powerball, then I will be able to pay the \$1.2
20 million. But otherwise I promise to pay.

21 MR. LOPEZ: No, no, no. I am sorry. I didn't get
22 to finish. It wasn't secured yet so she has one week of the
23 date of yesterday to go to California and secure that
24 property. I actually have a printed out, much clearer version
25 that I typed up of the conditions that were set. I am happy

1 to give them to the Court.

2 THE COURT: I am all right with what I have got
3 here.

4 MR. LOPEZ: But it is a \$1.2 million bond that is
5 secured by \$520,000 in equity, so it is a partially secured
6 bond that she has in a house that she owns. She can prove she
7 owns it.

8 THE COURT: Who is she?

9 MR. LOPEZ: I am sorry. Her aunt, Lomore Elbaz, is
10 standing right here.

11 THE COURT: Good afternoon.

12 MR. LOPEZ: Lomore is a U.S. citizen. She has
13 her own company. She has -- that she started -- a tech
14 start-up company. She was able to buy this house from profits
15 from sales of stock from a previous company she had started.

16 She has a daughter who is 6 years old, whom she
17 shares custody with. That she has a three-bedroom house and
18 extra room for her. She has built a life here. That is,
19 Lomore.

20 She is extremely close to Lee. This is not a
21 situation where some distant aunt I have out in California.
22 Lomore babysat Lee, she tutored Lee. She was in Israel a
23 month ago visiting Lee. These two talk weekly. They are best
24 friends.

25 She took her on her first trip abroad when she was

1 16. This pretrial services report discusses frequent foreign
2 travel. I have frequent foreign travel. Everyone does. If
3 you visit and you vacation and you are a normal person who has
4 an average amount of means, your family takes you on vacation.

5 She got taken to Cypress. She got taken to Paris.
6 She traveled abroad after she left the army as people do.

7 I really would like an opportunity to discuss with
8 you her personal characteristics because that is the most
9 weighted factor of the three. The nature and seriousness of
10 the offense is the least weighted factor of the three. And I
11 do have cases I can proffer to the Court --

12 THE COURT: From the Fourth Circuit? I am not
13 interested in any Second Circuit cases. I am not interested
14 in some other Circuit's interpretation of the Bail Reform Act.

15 If you have Fourth Circuit cases that tell me how I
16 should weigh the factors under 3142, that I haven't been doing
17 my job right for like 5 years because if there are certain
18 factors that are weighted and some that are less weighted,
19 nobody -- I missed that class and nobody has told me about
20 that.

21 But if you have authority from the Fourth Circuit
22 that tells me personal characteristics is the most weighted
23 factor and that all the other factors, nature and
24 circumstances of the offense, blah, blah, blah -- are less
25 weighted on some kind of scale, and that is from like a

1 published opinion from the Fourth Circuit in Richmond, I am
2 really interested to hear it.

3 If you are going to tell me that it is something
4 from Pearl Street in the Second Circuit in Brooklyn, I am not
5 really moved by that, but whatever you got.

6 MR. LOPEZ: I won't tell you it is from Brooklyn but
7 are you moved by any other district or is it just Brooklyn
8 that you don't like?

9 THE COURT: I am just asking do you have Fourth
10 Circuit -- I mean, you can tell me what they are and I will
11 probably go look at them.

12 MR. LOPEZ: On that particular point --

13 THE COURT: Because I don't think it is interesting
14 but I am asking you, do you have -- we are now in the Fourth
15 Circuit, and I am asking you --

16 MR. LOPEZ: I don't, Your Honor. I don't have
17 controlling law for this circuit at my fingertips for you on
18 the weight issue. Setting that aside --

19 THE COURT: Weight of the factors issue.

20 MR. LOPEZ: That is right. The weight of the
21 factors, which one to weigh more than the other. Let me --

22 THE COURT: Just as an aside -- and sorry about
23 this. They should have warned you that I am annoying. What
24 is the case from the Second Circuit that you were going to
25 give me that has these -- the weighing factors?

1 MR. LOPEZ: I am not sure why you think that it is
2 the Second Circuit. I am not sure that it is, Your Honor.

3 THE COURT: Well, maybe it would be like the ninth
4 or something like that.

5 MR. LOPEZ: It is probably one of those. Frankly my
6 notes are -- I should never admit this. My notes are a mess.

7 THE COURT: Well, we can come back to it later. Go
8 ahead.

9 MR. LOPEZ: Let me just kind of start from the top.
10 The one case I do want to cite here that I believe is from the
11 Second Circuit, so not controlling, it is Kashagi*. It is the
12 Ninth Circuit. It is Motomedi. I will give it to you. 767
13 F2d 1403.

14 And the reason why I am citing this case is because
15 it stands for the proposition that doubts regarding the
16 propriety of release should be resolved in favor of the
17 Defendant. That is why I am citing that.

18 THE COURT: She is presumed innocent. The Bail
19 Reform Act says she is presumed innocent.

20 MR. LOPEZ: A little bit more than that though. So
21 now we have two people, two professionals in New York, setting
22 aside whether it is a 5.1 or not, the Magistrate spent a lot
23 of time on this and came out with a decision that release was
24 appropriate with a bond that she said, and I don't have a
25 transcript, there wasn't time, but that was an awful lot of

1 money that put the aunt at a great deal of financial risk.

2 It says a lot about the faith of the aunt. This is
3 a very serious amount of money. Almost all the equity she has
4 in her home.

5 So this was a very considered opinion, and when it
6 comes down to pretrial detention here makes a different
7 recommendation, I understand that. But now we have two
8 different people coming to a different conclusion based on the
9 set of facts here. And that is a doubt, and that doubt goes
10 in Lee's favor.

11 You mentioned that she -- the Government wants to
12 say that there was 18 hours of time. 18 hours of time. She
13 was in New York. There cannot be a better city in all of the
14 United States to escape. She doesn't need to go get a
15 passport. We all know that -- and I practiced in Miami before
16 I came up to D.C. -- that not having a passport, it is nice.
17 It is good to say, no more passport but that is not what
18 prevents people from escaping.

19 If she wanted to escape, you can't tell me she
20 couldn't have slipped off that subway, got lost in a sea of
21 people and found her way out of here. And even if she wasn't
22 successful she could have tried. She didn't. She came down
23 to Maryland with her aunt, who was released in her custody.

24 Your Honor, I didn't go with her. I got on a plane
25 and flew home. I didn't escort her. No one from my firm

1 escorted her.

2 THE COURT: So the aunt flew from California to New
3 York.

4 MR. LOPEZ: The aunt flew from California to New
5 York and she couldn't do it on Friday when this originally --
6 she was arrested because there wasn't time.

7 So what happened was she gets arrested Thursday
8 night. She wasn't coming in for some birthday celebration,
9 Your Honor. It was her birthday, and she was coming to
10 celebrate with her two good friends because that is what she
11 chose to do on her birthday, on her 36th birthday. That is
12 how close they are. I am going to come spend this time with
13 you and I am going to stay with you.

14 She gets arrested in the middle of the night,
15 obviously not at all -- has no idea why. I think to this day,
16 although I have gone over the complaint, it doesn't really
17 see, you know, where the issue is. I understand what has
18 happened. You know, why -- what she did wrong. And the aunt
19 got here as we could. The hearing got continued. The first
20 Magistrate Judge wanted to see the surety. It got continued
21 until Tuesday.

22 The aunt, who owns her own business and can do this,
23 left, came here to offer up to be custodian, to offer up the
24 security she has in her house, and I explained to her, the
25 aunt. I keep calling aunt. Her name is Lemoire. I explained

1 to Lemoire, listen, if you are going to be a custodian, this is
2 going to be a pretty serious thing here.

3 This niece of yours that you love so much, that you
4 spend, you know, that you are so close with, you are going to
5 have to rat her out if you see her trying to leave. You are
6 going to have to call pretrial services. You are going to
7 have to call the marshals. If you think that she is trying to
8 leave, you need to rat her out.

9 And Lemoire's response, and she can tell you herself,
10 and forgive me, Your Honor, for saying this, damn right I
11 will. She doesn't want to lose her stuff. She doesn't want
12 to break the law herself by aiding and abetting. This is very
13 important to her. She is going to make sure this works, from
14 the San Francisco point to here, if you want to talk logistics
15 and plan.

16 One of the conditions the Judge set, which was my
17 recommendation, was that the -- and the aunt has agreed,
18 Lemoire has agreed -- was that Lemoire will accompany her here
19 for court hearings and at trial come here as well for the
20 trial.

21 I also offered up, although the Court declined to
22 take me up on it, a private, after-market GPS system designed
23 precisely for these purposes that are accurate within six
24 feet, update every two seconds and not only issue a 97 decibel
25 alarm when tampered with but we can have pretrial

1 services -- they can be instructed and will be instructed to
2 alert pretrial services, the marshals, the local PD.

3 I can even have Mr. Mitchell, Mr. Mitchell can see
4 it on his phone where she is at any given moment. Your Honor,
5 let's go back to the Bail Reform Act. Can conditions --

6 THE COURT: Can these things work for high school
7 age children?

8 MR. LOPEZ: Listen, I am struggling with my 4-year-
9 old. I can't even imagine when she gets there. So Your
10 Honor, I am jumbling around. Let me just try and stay focused
11 here for a second.

12 First, let me just deal with what the Court actually
13 asked me to talk about in the first instance, which is this
14 danger to the community concept based on the economic crime.
15 As I said, this is not a presumption case. This is not my
16 burden to overcome. It is theirs to establish.

17 It is an economic crime, and those are
18 extraordinarily serious. There is no doubt about that. And
19 we can talk about this complaint, which I know you signed.
20 There is obviously probable cause for the complaint. We don't
21 have detention hearings unless there is probable cause.

22 But when we talk about the offense itself, and we
23 talk about the strength of that case beyond probable cause, I
24 am going to tell you I have got some things to say about it.

25 And while it is not the time to litigate any kind

1 of, you know, merits overall, I will just talk about the face
2 of the complaint.

3 The \$1.1 million alleged, Your Honor, that, under
4 2(b)1.1, set aside any adjustments up or down, those are all
5 disputable, who knows? What we know for a concrete fact, they
6 are alleging \$1.1. That is what they have.

7 That is a base offense level of 6. And that is an
8 add 14, and you get to 20, and 20 is 33 to 41 months. That is
9 a lot of time. No one looks away from 33 to 41 months. It is
10 not a 20 year maximum, and we all know that a maximum
11 statutory sentence really doesn't mean a whole lot.

12 It is rare where you get to that maximum unless the
13 Judge, of course, wants to in his or discretion to do that.
14 So that is the type of sentence we are facing.

15 And now the danger to the community: That is not a
16 danger to the community based on what other people may still
17 be doing somewhere else that is ongoing. Is Lee here? She
18 gets released, is she a danger to the community? Is she
19 somehow going to be working at some call center out of her
20 aunt's house dialing for dollars to try to get people to keep
21 on this scheme? That is the question.

22 Not if there is ongoing fraud by somebody else. Is
23 this woman here a danger? This woman here is no danger to the
24 community. Risk of flight, yes. Danger, no.

25 Now let's talk about this woman here for a second

1 because I haven't had quite a chance to do that. Lee Elbaz is
2 36 years old. She has no criminal history. Not here
3 obviously. Not in Israel. She is from Israel and came here
4 to celebrate her birthday with her friends.

5 She comes to the US about once a year. Not every
6 single year. If you check her passport, you will see a
7 pattern -- every year, every other year. Visit a friend, to
8 tour our country, been to Vegas, been to California, Santa
9 Barbara. Visit her aunt. Her aunt used to live in New York.

10 Her aunt we talked a little bit about a second ago.
11 She is present here. Lemoire Elbaz. She is a US citizen. She
12 is a licensed lawyer. Don't hold it against her. I am
13 picking up something against New York but she is licensed in
14 New York.

15 She is not practicing as an attorney. She founded a
16 tech company in San Francisco. She lives there in a house
17 that she owns with her 6-year-old kid she shares custody with.
18 Lee is a typical person. She went to high school as average
19 women do, everyday people. She went to the army, as most
20 people in Israel do. After she traveled abroad. She took
21 some time off and traveled abroad.

22 Every single college person does that. Well, that
23 is not true. Not here but it is more common abroad. Not in
24 the United States. At least, I wasn't allowed to. She most
25 recently worked at UCom*, which is the company mentioned. A

1 place she has worked since 2014. Was hired as a team leader
2 there.

3 There is a lot of debate in the complaint, we will
4 talk about it in a second, on what CEO means and what it
5 doesn't mean. She left the company. She no longer works
6 there. She quit that company at the end of June of this year
7 due to medical issues.

8 And, you know, she has nothing to do with it. The
9 prosecutor talked about how there are these discrepancies and
10 she was getting paid and maybe even paid next week. She gets
11 a certain amount of paid sick time out. She had a lot of sick
12 time. She didn't take vacations so she gets paid her sick
13 time. Her last check, I think is coming next week.

14 It is a little bit different picture than the one
15 the Government wants to paint. As for family in Israel, yes.
16 Very normal, typical family. She has a brother and a sister.
17 We talked about contacts in Israel. Of course she has
18 contacts in Israel. She is from Israel. That is where her
19 family is.

20 She has a mom who had lung cancer. Couldn't make
21 this particular trip to be here today. She has a dad who
22 drives an ambulance. Has for 30 years. She is not married.
23 She doesn't have a husband back there. She doesn't have any
24 kids back there. She doesn't have any kids.

25 This is a law-abiding family. Not one of them has

1 ever had any brush with the law, period, full stop. This is
2 not someone who would flee. This is someone who is going to
3 show up as she did today unassisted by me, with the custody of
4 her aunt, as the conditions contemplated, as were followed
5 through.

6 Nothing has changed except in her favor of showing a
7 track record. One might think these are just words I am
8 telling you. Yes, she is going to show up, trust me. She
9 might say, trust me. I am just going to show up.

10 Well, that is what we are supposed to do under the
11 Bail Reform Act, come up with those conditions that are the
12 least restrictive ones to reasonably assure her appearance.

13 Now the complaint. Let's talk about the complaint a
14 little bit. This complaint, while not litigating the probable
15 cause aspect to be sure, is based on two witnesses'
16 statements, alleged former employees. The actual ownership
17 structure is not all that clear, and that is something that we
18 would be disputing.

19 We have no idea who they are. We have no idea what
20 their credibility is. They say certain things happened. And
21 that is in the complaint. But there is nothing more than what
22 they are saying, and if they are former employees, show me a
23 company that doesn't have disgruntled former employees who say
24 something happened to me.

25 You also have a group of investors. 33 of them they

1 cite. Several they have in the complaint, who say, I didn't
2 get my money back. They screwed me out of my money.

3 Okay, show me a company that doesn't have people
4 calling up and saying, I got screwed out of my money. Each
5 one of those cases is a mini-trial in and of itself.

6 The third thing they have are the e-mails. That is
7 the actual only concrete thing here. Except the trouble is
8 they are not conclusively on their face criminal at all. One
9 of them says that she is going to refer people to the legal
10 department. Okay, that is what happens when you run a call
11 center. You refer people to the legal department when there
12 is a dispute. You don't engage.

13 THE COURT: Or, to be cynical, as part of the scheme
14 that, when people want their money back or want their money
15 out, you set up these roadblocks that will prevent what
16 somebody is -- perhaps an innocent investor, from taking their
17 money back. You create roadblocks as part of your scheme,
18 artifice and criminal activity to stop them from doing it.

19 MR. LOPEZ: Okay, that may entirely but true in the
20 industry and there are probably a lot of bad apples who do
21 that. And not only binary options but probably everywhere.

22 Everyone has bad apples, and maybe some industries
23 have more bad apples than others. This apple is presumed
24 good. I can't take that complaint and say, presumed innocent
25 at least.

1 THE COURT: Are there allegations, counsel, in the
2 complaint, and again, I was a criminal defense attorney so I
3 stood where you are actually in this courtroom a bazillion
4 times but is there something in the affidavit that says that
5 she has multiple aliases? I don't remember that. Wasn't
6 there something in there that --

7 MR. LOPEZ: Yes, there is, of course. Paragraphs 47
8 and 49 are where they deal with that.

9 THE COURT: Talk to me about that, and why isn't
10 that indicia of somebody who -- forget about the
11 guilt/innocence because that is really not my issue, and as I
12 told you earlier, I presume her to be innocent but for the
13 purposes of the Bail Reform Act but tell me why I shouldn't
14 give -- and this is your word, not mine -- this weight, you
15 like this weight context that, you know, I am not sure you
16 want it to go down.

17 But why doesn't that fact that the government
18 alleges that your client has the ability to have different
19 aliases and to represent herself to others not under her real
20 name but uses aliases, why isn't that something that should
21 also give me some concern when I am contemplating whether she
22 is a risk of flight because if she knows how to use aliases,
23 and that kind of sets off some alarm bells for me that she is
24 pretty sophisticated.

25 MR. LOPEZ: So let me talk a little bit about that.

1 She works in a call and retention center. It is not at all
2 uncommon for people who deal with a high volume of calls to
3 use different names. To not use their real name. It is also
4 not uncommon for them to come up with some name that sounds
5 familiar to the customer base that they might be dealing with.

6 When I call my cable company at my house at
7 nighttime, and I have a pause and I get transferred to some
8 location that I don't know that I am being transferred to a
9 location, and someone named Jim answers who can barely speak
10 English, is that necessarily indicative of aliases and flight?

11 Call centers do these types of things. They use
12 stage names. This is not a legal to-do. In the context of
13 this complaint, there is a reference in the complaint in
14 paragraph 16 to an SEC alert. And the SEC alert talks about
15 binary options, and it says that they may, that people
16 engaging this, may be in violation of federal law. Not in
17 violation, maybe.

18 And then it says, you know, they may make material
19 misrepresentations. And that is at the bottom when they give
20 other red flags. They don't really say that those are
21 material. And that is the question. Is someone's name, if I
22 am talking to them in this context, is that material? That is
23 what the complaints lacks.

24 It is a material misrepresentation that you say your
25 name is Jim when it is really something else? That is going

1 to be for trial, right? That is later. But on its face here,
2 the complaint doesn't cite a duty. The complaint doesn't cite
3 an obligation that is established between these parties.

4 Let's remember what this is. For a lack of a better
5 term, this is betting. For a very lack of a better term,
6 Binary Options, I call you up and say, look, I am going to
7 place a \$60 bet that gold is going to be 353 cents tomorrow at
8 2:00 p.m.

9 If it is 53 cents or more, I win. If it is not, I
10 lose. I am not so surprised about these investor complaints.
11 People lose money here. That is what happens, and they are
12 probably pissed about it. But at the same time, that doesn't
13 mean that people fielding these calls using stage names are
14 making some material misrepresentations.

15 Same concept with location. I mean, let's look at
16 paragraph 17 of this. I am sorry, paragraph -- there is no
17 question they were talking about using different locations
18 and, you know, there are a thousand reasons why that might be
19 so, in particular when you are talking about some place in
20 Israel.

21 You don't want to advertise you are talking to
22 someone in Israel. I am not sure that it is true or not true.
23 What I am trying to say is that the strength here, what she is
24 supposedly going to run away from is not as strong as the
25 Government wants it to be.

1 They do a lot of things in this complaint to make it
2 think like this is some Nigerian boiler room or some sort of
3 lottery scam. That is none of these things. It is a
4 legitimate business, legal type of business in Israel as well
5 as here, and if you look at paragraph, just to point something
6 out to you of how the complaint is drafted to kind of get you
7 in that spot, look at nine, paragraph nine, for a moment.

8 It talks about a company called Spot Option, which
9 is own related, not part of the same company as UCom. The
10 Government doesn't dispute that. And it wants to tell you
11 about a former employee at Spot Option. Someone who no longer
12 even works at Spot Option. We don't know who they are.

13 And it says that Spot Option is based in Israel but
14 the contact portion, --- portion of that Website shows
15 locations in other places of the --- .

16 I have no idea what the relevance of that is. I
17 have no idea who this person is, if he even knows his own
18 company but I can tell you, you can go on any major
19 corporation's Website and their contact us place is going to
20 list a location or two, and they are going to have a ton of
21 other offices.

22 Here in DC, almost every company has an office for
23 government relations. They don't list those on the Website.
24 I am not sure where that fits in.

25 There is another paragraph that says, the Apple

1 iPhone doesn't carry these apps, which also is not true. I am
2 not sure where that fits in. It is a leap. Maybe it fits
3 into the broader scheme. Of course, potentially it does, but
4 how does Apple not carrying an iPhone make her scared that she
5 has got to get out of this country?

6 And I will tell you, Your Honor, it doesn't. You
7 know, these witness statements say all kinds of things that
8 when I read them -- I mean, I separated out each one for Lee.
9 What are the witnesses saying about Lee? What are the e-mails
10 saying?

11 The witnesses say that she brags about soothing
12 customers. Okay, all right. The witnesses say that, you
13 know -- that is exactly what she is supposed to do. She runs
14 a call center. The witnesses talk about how your bonus and
15 incentive options for making certain targets, and -- this is
16 paragraph 51, Your Honor, and that it motivated sales staff to
17 take whatever steps necessary to convince customers to deposit
18 funds.

19 It is kind of two things imbedded here. I will deal
20 with one of them. This is not an e-mail saying, from Lee
21 saying, take whatever steps necessary. It is not even a
22 statement from the witness that said, Lee told me, take
23 whatever steps necessary.

24 This is an impression of what motivates people to do
25 things. How is that possibly something that she is going to

1 run away from? That is so scary that she is going to run way?

2 These two witnesses, we have no idea who they are.

3 By the way, the idea of convincing a company to stick with you
4 to deposit more, to continue business, every time -- again, I
5 actually do hate my cable company. I call my cable company, I
6 threaten to leave. They convince me why I need to stay, every
7 single time.

8 This is not a Nigerian boiler room. It is not a
9 lottery. It is a business, legitimate business, that we are
10 talking about here.

11 Back to the e-mails just for a few. As I mentioned,
12 to defuse the situation, I mentioned where she says in
13 paragraph 59 -- I am sorry. I lost track of myself here.

14 It is in 58. You know, an investor is complaining,
15 and the e-mail --- says Lenna* is watching this e-mail as
16 well. She would like to schedule a call with you when you are
17 available.

18 Someone complains. The manager here says, let me
19 call you back. Let's talk about manager/CEO. A lot made of
20 the CEO. We have got a couple of different things going on
21 here. CEO in Israel may not mean the same thing here. She is
22 the manager of this whole retention center. Sure, she
23 supervises other people. She may even supervise other
24 managers, I don't know.

25 She does not own this company. There is not one

1 allegation in here that she owns it. In fact, there is a
2 statement in here contrary to that in paragraph 44 that she is
3 not -- that she reported to the owner.

4 She is not an owner. It says she reported to the
5 owner. She is not an owner of the company. She had only been
6 there four years. She has \$20,000 of liquid assets. She is
7 not the CEO as we think of things as the CEO. Even the
8 complaint itself talks in paragraph 53 that she used it
9 because it made customers feel important.

10 Is that material to make me feel like am talking to
11 the head honcho when I am really not talking to head honcho?
12 I don't know. It doesn't sound like it to me but maybe in
13 some --- of this case it is. I don't know.

14 Complaint fails to say -- they don't that next step.
15 They say there are aliases but they don't say why that is a
16 material issue. On the aliases piece, she has an e-mail
17 address and she signs it with her own name, Lee.

18 This is, you know, there can be all kinds of experts
19 later, disputes back and forth, but the standard operating
20 practice when you deal in high volumes, you don't want you
21 name out there. You don't want your e-mail out there on some
22 spam list.

23 There are all kinds of reason in this particular
24 type of business to do such things. And the idea that you
25 have got disgruntled, former alleged employees making some

1 statements, and you have got investors who are engaging in a
2 risky business mad that they lost the money.

3 And you have got e-mails that are on their face not
4 evidence of criminal action. They raise eyebrows, no
5 question. I am not going to tell you they don't raise
6 eyebrows. I am not trying to tell you this is a story that I
7 read to my 4-year-old and there is nothing to see here.

8 What I am trying to tell you is that there are a lot
9 of points of this complaint that are worth fighting, that
10 should be fought, and that are not, given the amount of time
11 that we are talking about -- maybe I am jaded because I have
12 seen some big sentences where people were still potentials
13 that were released.

14 It is not a situation where she is going to run at
15 the first light. She didn't, by the way, run at the first
16 light. There, in this district by a different Magistrate
17 Judge, conditions on facts, economic crime, living in another
18 area, pretrial release was also granted. I can tell that was
19 Magistrate Judge Grimm.

20 I can tell you about the facts of that case if you
21 want. Told to live in Atlanta as opposed to the district,
22 Maryland here. Maybe it was North Carolina. Again, I
23 apologize, Your Honor. I can get it actually straight if you
24 want it.

25 But I am trying to say here, Your Honor, is that

1 from a personal characteristics of the Defendant, setting
2 aside whatever weight should be assigned. Let's assume they
3 are all equal, and believe me, I am not going down any road to
4 convince you otherwise.

5 THE COURT: That ship has sailed.

6 MR. LOPEZ: And it is really frankly, to me it is
7 not -- that is important. Facts stand for themselves. Each
8 of these factors, on the facts, stand for themselves and all
9 of them support pretrial release in this case.

10 You have got a law-abiding citizen in another
11 country. That is pretty much what is holding her here for the
12 Government. I didn't hear much other than that, that of
13 substance. And being a foreign national in and of itself, is
14 not a reason to detain with no conditions, right?

15 That doesn't get you to no conditions. She -- on
16 the nature and the seriousness of the offense, of course, it
17 is a serious offense alleged: wire fraud, victims, potential
18 victims at this stage. None of that has been really
19 established.

20 As I mentioned, each one of these investor cases is
21 a mini-trial on their own. There are always two sides to a
22 story. I don't know what happened here.

23 And then when you talk about the weight of the
24 complaint against Lee herself as opposed to the industry. If
25 you look at that complaint, there is a lot in there about

1 industry norms and in general. Generally speaking, industry
2 insider.

3 What about Lee? What do we have about Lee? She had
4 stage names. She had other people in her office who were
5 doing stage names. Okay, I don't know that, that is material
6 to this case and it is sure not indicative of risk of flight
7 here today.

8 She has e-mails where she is telling people not to
9 make mistakes. Some of them raise more eyebrows than others
10 about how things are wired. I don't know what that is. It is
11 not a sanctions case. It is not like a stripping situation.

12 I don't know what is happening here. These are all
13 things that are going to be explored but they sure don't, on
14 their face, when looked at, paint a picture of the crime of
15 the century or that she is the mastermind of it.

16 In fact, I bet you the Government doesn't even
17 believe she is the mastermind of it despite what they are
18 saying here. I am sure there are other people they want much
19 higher than her if there is a crime here at the end of the
20 day.

21 Your Honor, she stands before you with a loving,
22 very close relative with assets to post. To serve as
23 custodian. She has a friend in New York who is willing to
24 post more money. He is married to someone who is right now
25 under consideration for a state judgeship.

1 They are willing to put that money that they have at
2 risk as well if called upon to do so. She is not going to put
3 her aunt in jeopardy. Her aunt won't let her be put in
4 jeopardy. I can tell you more about the GPS, every two second,
5 six foot accuracy for Mr. Mitchell and whoever else wants it.
6 I don't think Mr. Mitchell actually wants it.

7 THE COURT: He is shaking his head. I don't think
8 he wants it.

9 MR. LOPEZ: But detention is an extreme. And
10 according to you, you know this. Detention is the last
11 resort. I don't see how we are anywhere near the last resort.

12 If anything, as every day goes forward, she shows
13 her track record of being able to comply. The aunt is, you
14 know, Lemoire and her, there is a 5:00 p.m. flight out of DCA,
15 not Dulles, DCA. The difference is important.

16 Dulles is an international airport. DCA is a
17 national airport. Nonstop to San Francisco. She will be
18 under house arrest in San Francisco with GPS, with the -- and
19 these are the conditions that were found reasonable at the
20 Magistrate Judge and pretrial services up in New York.

21 \$1.2 million secured by \$500 equity in aunt's house.
22 The aunt also has equity in another house worth \$600,000. Her
23 share is co-owned with her ex. I don't know how she secures
24 that. That is the issue.

25 She also has about \$100,000 in assets, and that is

1 how we get to \$1.2 million. And she is ready to sign on the
2 dotted line no problem. Home incarceration, travel restricted
3 as the two districts for court appearance, attorney visits,
4 medical emergencies. The aunt must travel with her.
5 Surrender passports and not reapply.

6 Report as directed to pretrial services. GPS
7 monitoring and then there was another condition added of no
8 communication with any co-Defendant or conspirator known to
9 the Defendant, all persons involved with the companies named
10 in the complaint or alleged unlawful activities except in the
11 presence of counsel.

12 That should hopefully ameliorate any issues of
13 ongoing fraud because if they get wind that she is doing any
14 of this, that is a violation of her condition.

15 Your Honor, I end where I started. What do we know?
16 We know a process was followed. We know folks in New York who
17 disagree obviously with the folks down here. Exercise their
18 own judgment. I can't speak to how fast they did it, how much
19 time they took into consideration, how much care they made.

20 But nevertheless we have to trust in the process,
21 and they did what they were supposed to do. And they came up
22 with reasonable conditions. The Magistrate Judge went through
23 that same exercise. Nothing has changed except those
24 conditions are even more reasonable today due to her
25 appearance here before Your Honor.

1 I ask you to apply the Bail Reform Act as I know you
2 will. Let these conditions stand. I am not even sure -- I
3 think there could be even less-restrictive means but these
4 work so I am not going to push my luck in that regard,
5 especially given the uphill battle I am facing.

6 Let her go to the bathroom when she wants to go to
7 the bathroom. Let her take a shower when she wants to take a
8 shower. Let her wear what she wants in the house. Let her
9 get a snack when she needs to get a snack.

10 She is presumed innocent. She should not be
11 detained. This is a case where they apparently have done
12 search warrants. There are going to be lots of documents.
13 There is going to be discovery. They have got cooperators.

14 I don't know when this is going to trial. Why is
15 she being locked up during that time when she showed up here
16 today?

17 18 hours. In other pretrial detentions, the first
18 second, someone is going to flee. The first second they can,
19 they are out of here. Apparently my next argument, I can say,
20 well, it takes about 18 hours for someone to leave, according
21 to the Government. She didn't.

22 This is not to her. This is the same as every
23 Defendant, so I don't mean to say this is, in fact, the very
24 least weighted, if any weight. It is going to be difficult
25 for me to prepare a defense with her, and for her to prepare a

1 defense with anybody incarcerated.

2 In San Francisco she can come to Orrick's offices.

3 We are based in San Francisco. Sit with a videoconference
4 with me, and we can do this. We can do this the right way,
5 the way it deserves to be done.

6 This is not a simple cocaine case. You know, was
7 the cocaine under the seat or was it not? This is going to
8 trial in a month. Your Honor, the Bail Reform Act, under its
9 terms, is designed to protect the Defendant, not a sword for
10 the Government.

11 Let's follow that Bail Reform Act and impose these
12 conditions here, which have proven to be, well, maybe not the
13 least restrictive. Restrictive conditions enough to assure
14 her appearance as required.

15 THE COURT: Okay. All right, thank you.
16 Government, anything else?

17 MR. KHARDORI: Yes, Your Honor. I will try to be
18 brief.

19 THE COURT: Why don't you concentrate on a little
20 bit about -- Mr. Lopez talked about, and I have no real
21 interest in it one way or the other but why don't you talk to
22 me briefly about what the Government alleges this Defendant's
23 roles is in this scheme to steal money from other people by
24 the binary option thing.

25 And once they start making money, they don't let you

1 have your money back and then they steal all your money. What
2 is the Government's allegation as to this specific Defendant's
3 role in this conspiracy?

4 MR. KHARDORI: Well, Your Honor, the defense said
5 that CEO doesn't really mean CEO. That is, I think, actually
6 even conceitedly itself a misrepresentation, right, because
7 that title may very well matter to people.

8 So we have direct misrepresentations by this
9 individual, not just about her title but about her name and
10 where she was. She is managing this team of people who are
11 also -- and then helping them set up aliases, proving aliases.

12 And I think there are e-mails cited in the complaint
13 in which she is address the matter of customer withdrawals,
14 and at a bare minimum is facilitating the creation of those, I
15 think as you put it, those roadblocks.

16 All of that is fraud. All of that is fraud. Very
17 briefly, the points that were raised about this, which I
18 thought were disturbing diminishments of the allegations in
19 the complaint, to put it mildly.

20 The use of aliases is serious. When you call your
21 cable company and you are speaking to someone who may not give
22 you their real name, I think that is a very different matter
23 than maybe when you pick up the phone and call your financial
24 advisor.

25 When you pick up the phone and someone is selling

1 you a financial product, that is very different. At the cable
2 company, that may not be material. It is going to be material
3 here. I bet the investors wanted to know or else they
4 wouldn't be lying about it.

5 The roadblocks argument, the notion that other
6 people do it, well, I don't think that tells us anything
7 except this particular kind of conduct may be very
8 unfortunately rampant.

9 The notion that it is betting, okay? Well, here is
10 the difference between gambling at a casino and what we are
11 talking about here. Nobody is lying to you about your odds at
12 a casino, okay? Nobody is calling you up and coaxing to
13 invest more money in a financial product that, mathematically,
14 you are going to lose money in.

15 That is the fraud. It is not the existence of the
16 casino, right? Casinos functions properly, if they are
17 obviously licensed in the right jurisdictions, if they are not
18 lying to the people about the kinds of money that they can
19 make.

20 I do also want to just -- for the record, I was not
21 at the detention hearing. I finished a trial yesterday so I
22 was not able to make it but a colleague of mine who covered
23 it, I have spoken to him extensively. We heard a lot about
24 what happened in New York.

25 From my understanding, it was 100 percent clear,

1 despite the suggestion otherwise, that this was de novo today
2 here. So clean slate. So all we know is what happened over
3 the last 18 hours. And I mentioned why I think that doesn't
4 tell us much at all.

5 And in fact I think we heard quite a bit about how
6 easy it is to get away. Slipping out on the subway. And also
7 this business about pretrial with the professionalism of the
8 people in New York. I have no doubt about that.

9 I also have no doubt about the professionalism and
10 thoroughness of the people here. So I don't think we should
11 be suggesting that any one or the other is somehow better at
12 this. These are difficult decisions as you well know, and
13 people are doing the best they can, and from what I have seen
14 and heard about what happened in New York, a much more
15 thorough job was done here this morning than was done there.

16 Also finally with respect to the notion that there
17 is no criminal history, as I am sure you well know, that is
18 very often the case in white-collar cases, someone is going to
19 show up with no criminal history.

20 So I think we have spent a lot of time during the
21 course of that presentation litigating the merits of the
22 complaint, which you obviously signed off on. So no probable
23 cause. We are here. Question is, whether this person should
24 be out. We talked about the harm, the economic harm, and the
25 very serious risk of flight.

1 I don't think you have enough facts or we have
2 enough facts to get comfortable that she is going to be here
3 based on this currently unsecured bond.

4 THE COURT: So let me ask you this though. And I
5 will hear from the proposed third-party custodian. But what if I
6 hear from the proposed third-party custodian. But what if I
7 loaded up on the money and, you know, Mr. Lopez, just one
8 word, yes or no, was it the understanding of the Magistrate
9 Judge in the Eastern District that this would be a de novo
10 review of her release conditions, yes or no?

11 MR. LOPEZ: Yes. I never meant to suggest --

12 THE COURT: What?

13 MR. LOPEZ: Yes, I never meant to suggest otherwise.
14 I was just showing that there were reasonable differences.

15 THE COURT: So what if I loaded up on the financial
16 component of this, made the third-party custodian post the
17 property before I release the Defendant, made the Defendant
18 post unsecured bond, and make sure that all the land records
19 were protected and that the third-party custodian would say
20 posted collateral up to, let's say, \$2 million. And that was
21 done before this Defendant was released from custody.

22 Would that address some of the Government's -- put
23 it on EM at her aunt's house in San Francisco, would that
24 ameliorate some of the Government's concerns or no?

25 MR. KHARDORI: Some but not all. I think here is

1 the fundamental problem with that. I think the complaint
2 makes very clear this is a multimillion dollar fraud. We are
3 not talking about just the Defendant who may or may not be at
4 the top of the totem pole here, right?

5 That means there are going to be other people who
6 are going to be interested in potentially helping, and there
7 are potentially unindicted co-conspirators.

8 So we are talking about sources of funds abroad that
9 could also potentially be put to use to make someone whole if
10 the bond package isn't falling apart.

11 THE COURT: But at this point in time, the evidence
12 that you have in the complaint -- not an indictment but in the
13 complaint -- you don't give me any information that you have
14 linked bank accounts to her, that money has gone directly to
15 her, that she has personally benefited from this.

16 You say to me that she is probably the CEO because
17 if you are a CEO in the United States you are probably a CEO
18 in Tel Aviv or Israel. That she has fake names when she deals
19 with investors and she gives instructions through e-mails to
20 the call center about how to mislead and rip off their quote,
21 unquote clients. I get all that.

22 But what -- do you have any other evidence that you
23 care to share about this Defendant's specific role in this
24 very large conspiracy to defraud people?

25 MR. KHARDORI: No, I think that actually, accurately

1 sums up the allegations, yes.

2 And I think just at this particular junction, I
3 don't think we have enough available information, even if
4 proposed a very steep bail package, that it could be satisfied
5 or that it would be commensurate to the very serious flight
6 risk that we have here.

7 And that is really our central concern here, about
8 that particular issue, the notion that a lot of money could be
9 put up. Well, that is not the sole issue, right? The issue
10 is not just a lot of money but is it commensurate with the
11 risk? And there is an extremely serious flight risk here.

12 THE COURT: And what do you base that on?

13 MR. KHARDORI: Well, this person has the bulk of her
14 ties --

15 THE COURT: No, I know, so she doesn't have a lot of
16 ties to the United States but she has an aunt here who is
17 willing to post money and be third-party custodian. Willing
18 to let her live with her. Willing to accompany her to all
19 court appearances. So it is not like, defense is saying,
20 well, just let me out and I promise I will come.

21 There are some conditions that have been presented
22 by the defense that could reasonably assure her appearance
23 and, you know, what information other than just the obvious,
24 that she doesn't have -- she is not a second-generation
25 Washingtonian or hasn't lived in Prince George's County or the

1 southern division for her entire life, what is the
2 Government's argument that she -- specific, with
3 particularity -- that she is a serious flight risk because now
4 she has got these conditions that she is offering that would
5 mitigate against those.

6 MR. KHARDORI: Well, I don't think, much beyond, as
7 you noted, what we have already sort of gone over.

8 One of the things that is actually rather telling is
9 we keep hearing -- and to my understanding this happened in
10 New York, we were hearing a lot about friends who mysteriously
11 never show up.

12 So maybe if we have one or two here but, you know,
13 in every single appearance, my understanding is more and more
14 friends get added to the list who don't show up.

15 So I understand logistically it is not easy for
16 people to travel and things like that but a lot of this is
17 just happening on the say-so, frankly, of the defense counsel
18 and that is not good enough for us.

19 THE COURT: All right, thank you. Pretrial, any
20 other comments other than your report, and is there any
21 impediment with courtesy supervision in I guess would be the
22 Northern District of California if I go that direction?

23 MS. McCABE: Good morning, Your Honor. Beverly
24 McCabe from pretrial services. We actually have not had an
25 opportunity to staff the case with our office there in San

1 Francisco.

2 They weren't open this morning so we have, if Your
3 Honor is inclined to release, we would respectfully ask that
4 we have an opportunity to ask our office there to go out and
5 actually do a home inspection at the proposed third-party
6 custodian's residence and then also investigate any properties
7 or moneys that are going to be posted to make sure that there
8 are no impediments to using that to make sure that the
9 complete bond can be met before the Defendant is released.

10 THE COURT: All right, thank you. All right,
11 Ms. Elbaz, is that how you pronounce your name? Come on up.
12 Good afternoon. Please raise your right hand.

13 (Whereupon, the party was sworn.)

14 THE COURT: You can put your hand down. What is
15 your full name?

16 MS. ELBAZ: Lemoire Elbaz.

17 THE COURT: And where do you live?

18 MS. ELBAZ: I live at 1633 Burrows Street in San
19 Francisco.

20 THE COURT: And what is your occupation?

21 MS. ELBAZ: I am the founder and CEO of a start-up
22 company, a software company.

23 THE COURT: And you heard Mr. Lopez -- are you a
24 licensed attorney?

25 MS. ELBAZ: I took the bar and passed it in New

1 York. I have a license in New York and Israel. I don't
2 practice though.

3 THE COURT: But you are licensed to practice law in
4 the state of New York?

5 MS. ELBAZ: Yes.

6 THE COURT: And anywhere else?

7 MS. ELBAZ: Israel.

8 THE COURT: In Israel, okay. Prior to yesterday, I
9 guess, when was the last time you saw the Defendant?

10 MS. ELBAZ: In August on my trip to Israel.

11 THE COURT: And describe for the nature of your
12 relationship with her.

13 MS. ELBAZ: She is my first niece. She is like my
14 daughter. I mean, she made me an aunt. So we are very close.
15 I babysat her as a teenager. I tutored her when she went to
16 school. I helped her when she went to college. She stayed
17 with me in Israel many, many times in my own apartment in
18 Israel when I used to live there.

19 When I moved here, she visited me and stayed with me
20 for a long trip when I lived in Palo Alto. She was supposed
21 to visit me this time. She is very, very close to me.

22 THE COURT: Who lives in your residence?

23 MS. ELBAZ: Just me and my daughter, and I have an
24 in-law downstairs. I sometimes Airbnb. I intend to stop
25 doing that for her to stay there given the circumstances.

1 THE COURT: So you sat here, and I saw you move from
2 seat to seat to seat. But I know you are anxious about this
3 but if I ask you to post \$2 million, all of the equity,
4 everything you own on Burrows Avenue or Street, whatever it
5 is, and any other cash assets that you have, secured by your
6 real property and an unsecured by her, would you be willing to
7 post everything you have to reasonably assure that she won't
8 leave the United States to avoid facing the charges in this
9 district?

10 MS. ELBAZ: So Your Honor, I am actually posting
11 everything I have, which is worth \$1.2 million. I also have a
12 share in my company. And I am willing to post that too.
13 Maybe so I explain the breakdown so you understand where it is
14 coming from.

15 My house on Burrows Street is a house I own on my
16 own, and it is worth \$1.2 million. I have a mortgage of
17 \$600,000 on it. So it is about -- my down payment was
18 \$420,000 but it is worth \$1.2 so we are assuming it is about
19 \$520,000, my share in it. And I have a mortgage statement to
20 prove my ownership of that house.

21 The second thing I have is in my bank account about
22 \$110,000 and I am posting that too.

23 The third thing is a house on Eugenia Avenue, which
24 I co-own with my ex. And as co-owner, I am allowed to post
25 only my assets in that asset.

1 The house is worth about \$2 million. There is about
2 \$650,000 mortgage on it. And I have a share of between
3 \$600,000 and 700,000 depending on how much we will sell it
4 for.

5 And the reason I didn't want to put a lien on it is
6 I am in a process with my ex to sell that house. So whatever
7 money comes out of that house, I am willing to post as a bond
8 for her.

9 I have no doubt she is not going anywhere, Your
10 Honor. She has never done -- she was never pulled over. This
11 is all one big mistake and I am sure it is going to clear out.
12 I wish I could say she is sophisticated enough to run such a
13 scheme and as her aunt I am saying painfully she is not
14 sophisticated enough to do that and I know that because I
15 taught her math.

16 THE COURT: So let me -- I am terrible at math and I
17 became a Judge. So I don't what that means -- let me ask --
18 don't talk too much about the case. You understand though, if
19 I make you third-party custodian you are going to have certain
20 responsibilities to be basically the eyes and ears of the
21 Court, and if she starts doing anything or causes you concern
22 about not following the conditions that I set, you are
23 going -- I don't care whether she is your niece or not -- you
24 are going to have to have the obligation to contact pretrial
25 services and tell them that she is not doing what they told

1 her to do. Do you understand that?

2 MS. ELBAZ: Absolutely, absolutely, sir. My
3 daughter is here. She is 6 years old. I dragged her out of
4 school to be here. I have no intention to put my daughter's
5 life and future at risk. I have no doubt she is not going
6 anywhere. And I put my life on it.

7 THE COURT: And you have no doubt -- wait a minute.
8 You have no doubt that I will make sure that you lose your
9 house and every asset that you post and forfeited to the
10 Government if she runs? Do you understand that?

11 MS. ELBAZ: Absolutely, absolutely.

12 THE COURT: That is a risk that you are willing to
13 accept?

14 MS. ELBAZ: Absolutely, sir. She is not going
15 anywhere. She is going to clear her name. I want her to be
16 able to visit me in the United States. She is not going
17 anywhere. This is all one big mistake. She should have never
18 been arrested.

19 THE COURT: Okay. All right, you can have a seat.
20 Thank you.

21 MS. ELBAZ: Thank you, sir.

22 THE COURT: Anything else anybody wish to say?

23 MR. KHARDORI: Not from the Government, Your Honor.

24 THE COURT: All right. This matter is before the
25 Court for a detention hearing. The Government is moving for

1 detention on two prongs: Both that Ms. Elbaz is an economic
2 danger to the community, given the allegations contained in
3 the criminal complaint, and more pertinent is the Government
4 is moving for detention under the Bail Reform Act because they
5 believe that Ms. Elbaz is a risk of flight and a risk of
6 nonappearance, particularly given the allegations in the
7 complaint and her lack of ties to the United States of
8 America.

9 She is not a citizen of the United States of
10 America. She is a citizen of Israel. Was living in Israel
11 and traveling to the United States when she was arrested on an
12 arrest warrant at International Airport in New York.

13 And the Government is suggesting that there are no
14 conditions and/or combination of conditions of release that
15 would reasonably assure her appearance in Court.

16 The defense argues that -- spent a lot of time
17 talking about the merits of the complaint, which I have no
18 interest in and, in fact, as I have said, tried to move it
19 along in a nice way, saying that I presume her to be innocent
20 so we didn't need to hear about that but we did.

21 Says that now that the aunt is willing to step up to
22 be third-party custodian, that there are, in fact, conditions
23 and/or a combination of conditions of release that would allow
24 her return to the community, particularly San Francisco under
25 the supervision of the Northern District of California

1 pretrial services if they accept the case as well as third
2 party to her aunt at that Burrows Street address.

3 You know, this is a tough case because you can go
4 either way. Weighted factors or nonweighted factors. I think
5 that I would be totally justified and could write an opinion
6 order that would be bulletproof on review by just determining
7 on my own, which I am allowed under the Bail Reform Act, that
8 this Defendant is a serious risk of flight.

9 She really has no, except for her aunt and a couple
10 friends, she doesn't really have -- and she has no ties to
11 this community. No ties to the District of Maryland. And
12 even on her best day she has got an aunt and some friends, and
13 that is hardly sufficient for me.

14 We all know that criminal complaints are the tip of
15 the iceberg and we all know that, you know, sometimes the
16 Government's cases are in progress and that we don't really
17 know the full scope of what the alleged criminal conduct is.
18 All we know in this case is this very tip, this very little
19 snippet that the Government has chosen to put in the criminal
20 complaint that I obviously signed.

21 I consider all the factors under the Bail Reform Act
22 to be important and I don't think that any more of them are
23 important than others, and I apply them across the board as
24 fair as I can.

25 I am going to issue conditions of release in this

1 case but Ms. Elbaz is going to be detained in the custody of
2 the marshal until all the conditions are met. And the
3 conditions of release are as follows:

4 I do believe, given the circumstances and given the
5 aunt's willingness to post money and other conditions that I
6 am going to impose, that there are release conditions that
7 will eventually be appropriate for her to be released but they
8 are going to be in place before she steps out of this
9 courtroom, and if it messes up flights and stuff like that, I
10 am sorry but that is just the way it is going to be.

11 Ma'am, please listen carefully to this. I am going
12 to pass it down to you in writing when I am done. You may not
13 violate any federal, state or local laws while on release.
14 You must reside at an address approved by pretrial. You must
15 appear in Court as required and surrender to serve any
16 sentence imposed.

17 I am directing that you personally execute an
18 unsecured bond binding you to pay to the United States of
19 America the sum of \$1 million in the event of a failure to
20 appear as required or surrender to serve any sentence imposed.

21 I am placing you under the third-party custody of
22 your aunt, Lemoire Elbaz, at the address approved by pretrial
23 in the Northern District of California. You may not change
24 your address, as I said, without pretrial services' approval.
25 The third-party custodian is to supervise you in accordance

1 with all the conditions of release, to use every effort to
2 reasonably assure your appearance at all scheduled court
3 hearings and to notify the Court immediately if you violate
4 any of these conditions or disappear.

5 You are under the supervision of pretrial services.
6 You must report on a regular basis to the supervising officer.

7 You shall promptly obey all reasonable directions
8 and instructions of the supervising officer. I am directing
9 the third-party custodian, who agreed to execute a bond in the
10 amount of \$2 million secured by her real property and other
11 assets.

12 That \$2 million will be forfeited to the United
13 States of America in the event that the Defendant disappears
14 or fails to appear in Court. A significant amount of that,
15 whatever the numbers work out to be, will be posted to secure
16 the collateral at 1633 Burrows Street, San Francisco,
17 California.

18 That an order of Court will be signed, and that
19 this, that order, the order that I sign, has to be filed among
20 the land records for San Francisco or that address to evidence
21 the security interest of this Court and the Government in that
22 residence as well as the residence -- what was the other
23 address? The one that you own with your ex-husband? What is
24 that?

25 MS. ELBAZ: It is 15 Eugenia Avenue.

1 THE COURT: Eugenia Avenue?

2 MS. ELBAZ: 15, 1-5, Eugenia, E-u-g-e-n-i-a.

3 THE COURT: And where is this at, San Francisco too?

4 MS. ELBAZ: San Francisco, California, 94110.

5 MR. LOPEZ: Your Honor, I don't know if it is
6 appropriate for me to say anything but I don't know -- she
7 doesn't actually have \$2 million, I don't know that she has
8 securable assets in that regard.

9 THE COURT: She is going to post -- she has got \$1.6
10 in assets --

11 MS. ELBAZ: \$1.2.

12 THE COURT: I am just talking about net amounts. I
13 don't care about what your equity is in it at this point.
14 That you have a \$1.6 million residence, a \$1.2 million
15 residence on Burrows Street, and then you have half, roughly,
16 whatever your half interest is on Eugenia. That comes out to
17 about \$2 million.

18 MS. ELBAZ: \$600 I have in that --

19 THE COURT: Okay, so \$1.8. That comes out to about
20 \$1.8.

21 MS. ELBAZ: Yes.

22 THE COURT: All right. So I will make it \$1.8.
23 That is fine.

24 MS. ELBAZ: Can I secure an asset that I have a
25 mortgage on, Your Honor?

1 THE COURT: I don't really care about any of that
2 because if she disappears the Government is just going to take
3 whatever you have got and they can sort that out later. I
4 could care less about the net or whatever.

5 If she disappears, the Government is going to take
6 your property, and then you can fight with the Department of
7 Justice about how much you owe and how much you don't owe, and
8 you will never see any money because they will take the money
9 to make up the \$1.8 million that you owe the Government. So I
10 am not really interested in what your equity is in the
11 property or not. It is not really important for my
12 discussions now.

13 MS. ELBAZ: I understand, Your Honor. I am just
14 asking physically if I will be able to secure the property for
15 any amount larger than what I owe on it because I have a
16 mortgage.

17 THE COURT: You are posting the property that has
18 \$1.2 million.

19 MS. ELBAZ: Yes, but if releasing her is dependent
20 on me being able to go to San Francisco and get the security,
21 I am just wondering if I will be able to get the security that
22 is more than what I can secure there.

23 THE COURT: You don't have to do anything. All you
24 have to do is I am going to sign a bunch of orders, and you
25 are going to sign them too, and one of these orders is going

1 to direct you to file one of these pieces of paper among the
2 land records for where you are.

3 So you don't have to go -- there is no action by you
4 other than filing something in the land records and giving me
5 proof that you did to pretrial.

6 MS. ELBAZ: Thank you.

7 THE COURT: But you don't have to like go try to get
8 real hard currency to put in an escrow or anything like that.
9 This is just in the event -- hopefully it never occurs but it
10 is in the event that she fails to appear. Otherwise, if
11 everything goes fine and the case gets resolved however it
12 gets resolved, then the lawyer files a motion to me saying,
13 hey, the case is over. Please release the third-party
14 custodian.

15 And I sign an order that you can take to the land
16 records where you live and take this cloud of the title. So
17 all I am doing now is like --- and clouding your titles. That
18 is all I am doing.

19 MS. ELBAZ: I understand. I just wanted to know if
20 it is physical to put a lien on the house on more than my --

21 THE COURT: That is a good point. All right, ma'am,
22 you are to surrender any passport, which has been done,
23 immediately to the Clerk's Office. ---, passport or travel
24 documents. Your travel is restricted to the district, the
25 Northern District of California and the District of Maryland,

1 or I guess Washington, DC, if you come visit your attorney.

2 Your Office, Mr. Lopez, is in DC?

3 MR. LOPEZ: Your Honor, my office is in DC but I am
4 hoping you can put as part of these conditions that she can
5 visit Orrick's San Francisco office so that way we can be
6 videoconferencing.

7 THE COURT: She can go anywhere in the
8 Northern -- we will get to that in a second.

9 Ma'am, you are to avoid all contact, directly or
10 indirectly, with any person who is or may become a victim or a
11 potential witness in the investigation or prosecution of this
12 case, including but not limited to any witnesses and
13 co-Defendants.

14 Government, do you wish to provide a list to
15 Mr. Lopez of people she should not have contact with or not?

16 MR. KHARDORI: Not at this time, Your Honor.

17 THE COURT: Okay, all right. Ma'am please listen
18 very carefully to this. There are a lot of people in pretrial
19 detention because they violate this condition. I am not sure
20 how smart you are or how not smart you are. It is obviously
21 who knows but if you reach out to anybody associated with this
22 case, any co-workers, any witnesses, any co-Defendants,
23 anybody to talk about this case, or figure out who is doing
24 what, who is talking to who, what has happened to whom, that
25 is an expressed violation of my release conditions.

1 If you have questions, you ask your lawyer. If you
2 reach out by any means whatsoever, it is a violation of these
3 release conditions. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Ma'am, you must refrain from possessing
6 a firearm, destructive device or other dangerous weapon.
7 Refrain from any excessive use of alcohol. I am directing
8 that you submit to a location monitoring program. You are
9 restricted to the residence of the third-party custodian
10 except for medical purposes, court appearances, attorney
11 visits or other activities specifically approved by pretrial
12 in advance.

13 Now, here comes -- this will be like another
14 30-minute discussion, which I really don't feel like having
15 but is this a case, Government or pretrial, where we should
16 restrict her access to the Internet given the nature of the
17 charges?

18 MR. KHARDORI: Yes, certainly.

19 THE COURT: Mr. Lopez, any comment on that?

20 MR. LOPEZ: I don't think that is at all necessary.
21 The Government clearly has an ongoing investigation. They are
22 clearly going to know if she has violated the Court's order of
23 contacting others and so on.

24 I don't think that is a condition that -- first of
25 all, I don't think they met the danger prong. Second, it

1 definitely doesn't go to -- I don't think it goes to risk of
2 flight either. Third, practically if the Court were to go
3 that way I think it is, tell her not to do it, her aunt has a
4 tech start-up company. She can't not have Internet in that
5 house. Maybe in the room --

6 THE COURT: This happens all the time. I mean, the
7 aunt -- I mean, I am not going to punish the third-party
8 custodian's use of the Internet but they can password protect
9 things and protect the devices from her use. That happens all
10 the time.

11 MR. LOPEZ: I don't think that is necessary and
12 frankly it would really impinge upon my ability to communicate
13 with her as well. We are going to be passing documents back
14 and forth. We are going to be doing things. I would much
15 rather her be able to do those things and use the Internet in
16 that regard.

17 She also -- yes, I just don't think that the facts
18 of this case warrant limiting. I don't think it is realistic
19 to think that she is --

20 THE COURT: The allegation is that she has used the
21 Internet and used e-mails to perpetrate a fraud. How is that
22 not relevant?

23 MR. LOPEZ: As part of a whole thing that they are
24 saying happened in Israel --

25 THE COURT: Forget about that. Yes, just answer my

1 question though. Just answer my question. The allegation is
2 that she has used the Internet under different names to
3 perpetuate bank fraud or whatever the allegation is here, and
4 that she has used the Internet as one of the vehicles upon
5 which the Government alleges she committed federal crimes.

6 And my question -- really simple. You said no, and
7 that is fine. That what confidence do I have, if I don't put
8 this restriction on, that she will continue to use the
9 Internet to either obstruct justice, talk to co-Defendants,
10 talk to witnesses, try to do whatever because that is the MO
11 that is contained in the criminal complaint in the affidavit?

12 That this Defendant, despite whatever role she may
13 or may not have, whatever level of supervision she may or may
14 not have, it is pretty clear she has used the Internet to
15 communicate with quote, unquote investors, and has used other
16 names and also has communicated with other employees at her
17 place of employment about how to do their business.
18 So I am just -- I am just wondering.

19 MR. LOPEZ: Your Honor, I just don't. E-mail is the
20 way people function today. That fact alone doesn't carry the
21 same weight it does maybe 10 years ago. I would say it is not
22 realistic to think that she is a danger of committing ongoing
23 fraud by having access to the Internet.

24 MR. KHARDORI: Your Honor, if I could just
25 briefly -- you are exactly right. This is an Internet fraud.

1 Already we are chipping away at the conditions here. 10, 20
2 minutes ago, it was, oh, she can go to the videoconferencing
3 at my office in San Francisco. Now it is I have to be able to
4 e-mail with her.

5 This case involves alias e-mails, false e-mail
6 addresses so we have no assurance that the Government can
7 necessarily even determine what is occurring while she is
8 accessing the Internet.

9 THE COURT: All right. Ms. McCabe, what are your --
10 do you have any thoughts on this one condition given the
11 nature and circumstances of everything that you have just sat
12 through for the last hour?

13 MS. McCABE: Your Honor, I believe it is an
14 appropriate condition. If I may also --

15 THE COURT: Did you say is?

16 MS. McCABE: I believe it is an appropriate
17 condition. It would have been a condition I would have
18 recommended given an opportunity.

19 Additionally, Your Honor. We do have a concern. We
20 are unsure. The Defendant didn't report that she is no longer
21 employed at the present time so we just want to make sure that
22 is the case, that while she is here in the US, that she is not
23 going to be working.

24 THE COURT: No, my intention is this. It is very
25 simple. I am moving a jail cell from the District of Maryland

1 to a 1633 Burrows Street, and she will be locked down in that
2 residence 24/7, not allowed to go outside, not allowed to sit
3 on the stoop, not allowed to take the trash out, not allowed
4 to go have a cigarette outside or whatever.

5 She will be able to leave when pretrial says it is
6 okay to leave, and those will be for medical purposes, court
7 appearances, attorney visits or any other matters approved in
8 advance by pretrial.

9 Other than that, she is locked in her aunt's house
10 24/7. Period, end of discussion. Then that way I have
11 confidence that she won't be a flight risk, and that is my
12 intention.

13 So she won't be having a job somewhere. And she
14 doesn't even have -- I mean, if we are going to be stickler on
15 ICE and immigration, she doesn't even have the ability to even
16 lawfully work here in the United States.

17 And if she wants to commit future crimes by this
18 company, then that is on her.

19 MR. LOPEZ: Your Honor, just on the Internet piece,
20 I may have something.

21 THE COURT: Why does she need to use the Internet in
22 the first place?

23 MR. LOPEZ: I will tell you why. I will tell you
24 the reason is that basically to be able to Skype her mom and
25 Skype her dad or Facetime her mom or dad. You need an

1 Internet connection to do that.

2 THE COURT: Mr. Lopez, I am old but I am not that
3 old. Go ahead. I understand about Facetime and Skype. Thank
4 you for the technological tutor but I know what that means. I
5 must be looking really old lately.

6 I am not going to put that as a condition now but
7 ma'am, be cognizant of the fact -- and the reason, a part of
8 me kind of agrees with Ms. McCabe that I think it is
9 appropriate.

10 But if you are foolish enough to -- I am sure they
11 will be doing what they do, the Government, and if you are
12 foolish enough to engage in misuse of the Internet to
13 facilitate or try to cover up or obstruct or interfere or
14 impede justice in the prosecution or any other case that is
15 related, and if you try to tamper or try to retaliate against
16 people or try to intimidate people and you use the Internet to
17 do that, then shame on you, and you will be in jail. It is
18 that simple.

19 Ma'am, you may not open any new lines of credit of
20 any kind without prior pretrial approval. You are not to
21 engage in the binary option business whatsoever.

22 The third-party custodian must personally accompany
23 the Defendant to all court appearances and all meetings with
24 counsel, and if they happen in DC fine. If it happens in San
25 Francisco, third-party custodian also must attend that as

1 well. And any such meetings must be approved, or travel must
2 be approved in advance by pretrial obviously under the
3 conditions.

4 The Defendant will stay in custody of the marshal
5 until such time as pretrial has evidence that the bond has
6 been posted pursuant to these release conditions.

7 MR. LOPEZ: Your Honor, can I just make it a little
8 bit more specific on the attorney piece in San Francisco
9 because I would like her to be able to go to our offices at
10 405 Howard Street.

11 THE COURT: Yes, I know. Orrick has a San Francisco
12 office. She has to get approval by pretrial that --

13 MR. LOPEZ: That is fine but the aunt doesn't have
14 to --

15 THE COURT: The aunt has to go.

16 MR. LOPEZ: To drive her there?

17 THE COURT: Yes.

18 MR. LOPEZ: Now can she be -- once she gets there,
19 can she --

20 THE COURT: She can sit in the lobby. I bet you guy
21 have a really nice lobby there with like cappuccino machines
22 and stuff like that. And she can sit in the lobby while your
23 client is Skyping with you on the Orrick Intranet. But my
24 purpose of this is when Ms. Elbaz is out in the community,
25 that she is accompanied by her aunt.

1 MR. LOPEZ: I get that. My question is whether an
2 attorney in our office could then -- we are barred, we are
3 under ethical obligations.

4 THE COURT: I know. I bet you guys are great
5 lawyers. I am sure you are but I am not going to -- no, no.

6 MR. LOPEZ: Thank you, Your Honor.

7 THE COURT: The reality is, like everything else, if
8 we start moving down the road and she seems to be in
9 compliance and we can revisit if pretrial says that, you know,
10 we can tweak some of these -- that they believe in their
11 professional judgment, given what is going on, that we can
12 tweak some of these conditions of release, then I will be
13 amenable to considering it.

14 I am not going to guarantee I am going to do it but
15 despite everything that has been said, I consider her to be a
16 flight risk. Is it enough of a flight risk to detain her?
17 That is a tough call for me. And it is really close. It is
18 really a close call for me.

19 But I am giving her the benefit of the doubt given
20 your filibustering here that I am going to impose what I
21 consider to be the least restrictive conditions, and these are
22 them because the next step is detention. There is no
23 intermediate step. This is as good as it is going to get for
24 her.

25 And as we move down the road, one or two things are

1 going to happen. She is going to violate them. And I am
2 going to issue an arrest warrant if the Government asks me to.
3 And I am going to put her in custody in San Francisco and she
4 can get on the marshal van or plane and be brought here to
5 Maryland and we will figure out what to do with her.

6 My hope is that she abides by these release
7 conditions to the letter and we don't have any problems moving
8 forward.

9 MR. LOPEZ: I will take the hint, Your Honor, and
10 pipe down.

11 THE COURT: You don't have to pipe down. You are
12 being a zealous advocate for your client. I got it.

13 Ms. McCabe, any other conditions other than what I
14 said I am not going to do? Any other conditions that pretrial
15 believes appropriate?

16 MS. McCABE: No, Your Honor.

17 THE COURT: All right, I am going to have to go back
18 and write these up really quick. In fact, Brandon, just give
19 me another conditions release form.

20 (Pause)

21 MR. LOPEZ: Your Honor, I am sorry to interrupt
22 you. The surety has another question and I want to at least
23 make sure I ask even though I think I answered it for her.

24 THE COURT: All right, what is your question?

25 MR. LOPEZ: She is a bit confused as to whether she

1 has to fly back to California, file papers, and then fly back
2 here before she can do it or is there some way to commit to
3 have it done in 24 hours.

4 THE COURT: Doesn't Orrick have an office in San
5 Francisco?

6 MR. LOPEZ: We do.

7 THE COURT: Okay. So, I mean, she is going to be
8 signing documents that are going to be killing a lot of trees.
9 That she is going to be signing a document that has to be
10 recorded among the land records for whatever county or however
11 they do land records out in California, I don't know how they
12 do them.

13 She needs to file my order both for Eugenia Avenue
14 and Burrows among the land records evidencing the Government's
15 interest in the collateral for property. If Orrick's San
16 Francisco office can do that, then she doesn't have to fly to
17 California to get it done. It can all be done by -- I think
18 you might have to overnight the order because they might
19 require an original. I don't know how all that works but she
20 can stay here until all that is done.

21 Otherwise, yes, counsel, she is going to have to fly
22 back to California, do it, and then fly back here to accompany
23 her niece back to San Francisco. But Orrick has a San
24 Francisco office. And maybe you guys can work with her to get
25 my order secured among the land records without having her

lcj

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1 travel back and forth, and if that can happen, that is fine
2 too.

3 MR. LOPEZ: Okay, Your Honor, I got the picture.

4 THE COURT: All right.

5 (Whereupon, at 1:02 p.m., the hearing was concluded.)
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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the duplicated electronic sound recording of the proceedings in the above-entitled matter.

Laura C. Jackson 10/13/2017
Laura C. Jackson Date
Transcriber